



Office of Audit Services
P.O. Box 942701
Sacramento, CA 94229-2701
Telecommunications Device for the Deaf - (916) 795-3240
(916) 795-0900, FAX (916) 795-7836

February 28, 2011

Employer Code: 0111
Job Number: P09-043

City of Ontario
Grant D. Yee, Administrative Services/Finance Director
303 East B Street
Ontario, CA 91764

Dear Mr. Yee:

Enclosed is our final report on the results of the public agency review completed for the City of Ontario. Your agency's written response indicates agreement with the issues noted in the report, except for issues related to the FLSA findings found in Risks 1 and 3. The written response is included as an appendix to the report. As part of our resolution process, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your agency and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original Signed by Margaret Junker

MARGARET JUNKER, Chief
Office of Audit Services

Enclosure

cc: Finance Committee Members, CalPERS
Peter Mixon, General Counsel, CalPERS
Lori McGartland, Chief, ERSD, CalPERS
Mary Lynn Fisher, Chief, BNSD, CalPERS
Don Martinez, Interim Chief, EMHS, CalPERS
Honorable Board Members, City of Ontario
Doreen Nunes, Fiscal Services Director, City of Ontario
Linda Matthews, Human Resources Director, City of Ontario

City of Ontario



Public Agency Review



Office of Audit Services

Employer Code: 0111
Job Number: P09-043

February 2011

CITY OF ONTARIO

TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
Results in Brief.....	1
Background.....	1
Scope.....	2
Risk and Mitigation Table.....	5
Exceptions	
Risk 1: Compensation Reporting.....	5
Risk 3: Payroll Reporting.....	10
Risk 4: Payroll Payments	12
Risk 6: Retired Annuitants.....	14
Risk 8: Industrial Disability Retirement Determinations	15
Risk 9: Unused Sick Leave	15
Risk 11: Health Enrollment.....	17
Risk 14: Automated Communication Exchange System	20
Conclusion	22
Status of Prior Review	Appendix A
City of Ontario's Written Response	Appendix B

CITY OF ONTARIO

RESULTS IN BRIEF

We reviewed the City of Ontario's (City) enrolled individuals, health and retirement contributions, member earnings and required health, retirement and Automated Communications Exchange System (ACES) documentation for employees included in our test sample. A detail of the exceptions is noted in the Risk and Mitigation Table. Specifically, the following exceptions were noted during the review:

- The value of uniforms was not reported to CalPERS.
- Non-reportable compensation was reported to CalPERS as special compensation.
- Special compensation was included in base pay.
- Payroll contributions were not submitted timely.
- Incorrect work schedule codes were reported for fire shift employees.
- Retired annuitant exceeded the 960 hour threshold and was not reinstated.
- Industrial disability retirement determinations were not completed timely.
- Additional service credit for unused sick leave was incorrectly certified.
- Required health enrollment forms were not maintained.
- Documentation to support dependent eligibility for health benefits was not provided.
- ACES security agreements and deletion forms were not completed and maintained.

BACKGROUND

The California Public Employees' Retirement System (CalPERS) provides a variety of programs serving members employed by more than 2,500 local public agencies as well as state agencies and state universities. The agencies contract with CalPERS for retirement benefits, with CalPERS providing actuarial services necessary for the agencies to fund their benefit structure. In addition, CalPERS provides services which facilitate the retirement process.

CalPERS Employer Services Division (ERSD) manages contract coverage for public agencies and receives, processes, and posts payroll information. CalPERS Benefit Services Division (BNSD) provides services for eligible members who apply for service or disability retirement. BNSD sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits. The Office of Employer and Member Health Services (EMHS), as part of the Health Benefits Branch (HBB), provides eligibility and enrollment services

CITY OF ONTARIO

to the members and employers that participate in the CalPERS Health Benefits Program, including state agencies, public agencies, and school districts.

Retirement allowances are computed using three factors: years of service, age at retirement and final compensation. Final compensation is defined as the highest average annual compensation earnable by a member during the last one or three consecutive years of employment, unless the member elects a different period with a higher average. State and school members use the one-year period. Local public agency members' final compensation period is three years unless the agency contracts with CalPERS for a one-year period.

The employers' knowledge of the laws relating to membership and payroll reporting facilitates the employer in providing CalPERS with appropriate employee information. Appropriately enrolling eligible employees and correctly reporting payroll information is necessary to accurately compute a member's retirement allowance.

The City of Ontario was incorporated in 1891 and operates under the council-manager form of government. Policy-making and legislative authority are vested in a governing council consisting of the mayor and four other members. The City Manager is responsible for carrying out the policies and ordinances of the governing council, for overseeing the day-to-day operations of the government, and for appointing the heads of the various departments. The City is a full-service city providing: police and fire protection; development including the construction and maintenance of streets, parks, water and sewer lines, traffic signals and other infrastructure; water, waste water and sanitation services; recreation and community services; and, cultural and social programs. Memoranda of Understanding (MOU) and employment agreements outline all City employees' salaries and benefits and state the terms of employment agreed upon between the City and its employees.

The City contracted with CalPERS effective January 1, 1946, to provide retirement benefits for local miscellaneous, police and fire employees. The City's current contract amendment identifies the length of the final compensation period as twelve months for all coverage groups. The City contracted with CalPERS effective October 1, 1989, to provide health benefits to all eligible employees.

SCOPE

As part of the Board approved plan for fiscal year 2009/2010, we reviewed the City's payroll reporting and enrollment processes as these processes relate to the City's health and retirement contracts with CalPERS. The objective of this

CITY OF ONTARIO

review was limited to the determination that the City complied with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the California Code of Regulations and that prescribed reporting and enrollment procedures were followed. The on-site fieldwork for this review was conducted on March 8, 2010 through March 12, 2010.

The review period was limited to the examination of sampled records and processes from January 1, 2007 through December 31, 2009. To accomplish the review objectives, we performed the following:

- ✓ Reviewed the contract and subsequent amendments the City had with CalPERS, correspondence files maintained at CalPERS, and employment agreements the City had with its employees.
- ✓ Interviewed key staff members to obtain an understanding of the City's personnel and payroll procedures.
- ✓ Reviewed the payroll transactions and compared the City's payroll register with the data reported to CalPERS to determine whether the City correctly reported employees' compensation.
- ✓ Reviewed the City's payroll information reported to CalPERS for the sampled employees to determine whether employees' payrates were reported pursuant to public salary information.
- ✓ Reviewed the City's process for reporting payroll to CalPERS to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed reported payroll to determine whether the payment of contributions and the filing of payroll reports were submitted within the required timeframes.
- ✓ Reviewed the City's enrollment practices pertaining to temporary/part-time employees, retired annuitants, and independent contractors to determine whether the individuals met CalPERS membership requirements.
- ✓ Reviewed the City's classification of employees to determine whether the City reported employees in the appropriate coverage groups.
- ✓ Reviewed the City's process for industrial disability retirement determinations and appeals for local safety members.
- ✓ Reviewed the City's calculation and reporting of unused sick leave balances for retiring members.

CITY OF ONTARIO

- ✓ Reviewed the City's compliance for additional service credit under the golden handshake provisions for retiring members.
- ✓ Reviewed employees and their dependents to determine whether the City properly enrolled eligible individuals into CalPERS Health Benefits Program.
- ✓ Reviewed health contribution payment information to determine whether the City remitted payments within the required timeframe.
- ✓ Reviewed health contribution payments to determine whether the City contributed the correct employee/employer contribution amounts.
- ✓ Determined whether the City maintained the required user security documents on file and reasonable security procedures were in place for ACES users.

CITY OF ONTARIO

RISK AND MITIGATION TABLE

In developing our opinions, we considered the following risks and mitigations. We also include our observations and recommendations.

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
1. The City may not accurately report compensation to CalPERS.	<p>We reviewed payroll records and compensation reported to CalPERS for a sample of 25 employees over two service periods. The service periods reviewed were the second service period of November 2008 (11/08-4) and the second service period of November 2009 (11/09-4).</p> <p>The earnings reported to CalPERS were reconciled to the City's payroll records. The City accurately reported compensation to CalPERS for the employees in our sample, except for the following instances:</p> <p><u>Monetary Value of Uniforms Provided</u></p> <p>The City provided uniforms for employees working in parks and maintenance, utilities and solid waste, streets, equipment and facilities services. The City stated that these uniforms were rented and cleaned; however, the City did not report the monetary value of the uniforms provided, as required. This special compensation should have been reported for three employees in our test sample.</p>	<p>The City should report the monetary value of uniforms provided to employees as special compensation.</p> <p>The City should work with CalPERS ERSD to assess the impact of this non-reporting and determine what adjustments, if</p>

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
<p>1. The City may not accurately report compensation to CalPERS. (continued)</p>	<p>Government Code § 20636(c)(6), states, in part, "The board shall promulgate regulations that delineate more specifically and exclusively what constitutes 'special compensation' as used in this section. A uniform allowance, the monetary value of employer-provided uniforms...shall be included as special compensation and appropriately defined in those regulations."</p> <p>California Code of Regulations § 571(a), defines uniform allowance as, "Compensation paid or the monetary value for the purchase, rental and/or maintenance of required clothing, including clothing made from specially designed protective fabrics, which is a ready substitute for personal attire the employee would otherwise have to acquire and maintain. This excludes items that are solely for personal health and safety such as protective vests, pistols, bullets, and safety shoes."</p> <p><u>Non-Reportable Compensation Reported as FLSA</u></p> <p>The City reported FLSA premium pay as special compensation, in the amount of \$18.40 in sample period 11/08-4 and \$32.75 in sample period 11/09-4, for one sampled employee. The employee was a non-shift fire prevention inspector who worked 40-hour workweek. The pay that was reported as special compensation is</p>	<p>any, are needed.</p> <p>A confidential list identifying the employees mentioned in this section of the report has been sent to the City and CalPERS ERSD as an appendix to our draft report.</p> <p>The City should stop reporting special compensation to CalPERS that does not meet the definition of FLSA premium pay.</p> <p>The City should work with</p>

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
<p>1. The City may not accurately report compensation to CalPERS. (continued)</p>	<p>considered overtime pay, which is not reportable to CalPERS and did not meet the definition of FLSA premium pay as defined under the Public Employees' Retirement Law.</p> <p>California Code of Regulations § 571(a)(5), defines FLSA premium pay for shift fire personnel as, "Compensation paid for normal full-time work schedule including premium pay required by FLSA. For example, a firefighter's normal work schedule is 56 hours per week. FLSA states premium pay must be paid on all hours worked above 53 hours per week up to what is considered normal for employees on a full-time basis. In this example, the firefighter works 56 hours in a normal work week. Therefore compensation would be reported for 53 hours per week and FLSA premium pay would be reported for 3 hours per week. Any work performed above 56 hours per week would be considered overtime and would not be reported to PERS."</p> <p>Government Code § 20635, states, in part, "When the compensation of a member is a factor in any computation to be made under this part, there shall be excluded from those computations any compensation based on overtime. For the purposes of this part, overtime is the aggregate service performed by an employee as a member for all</p>	<p>CalPERS ERSD to assess the impact of this over-reporting and determine what adjustments, if any, are needed.</p> <p>A confidential list identifying the employee mentioned in this section of the report has been sent to the City and CalPERS ERSD as an appendix to our draft report.</p>

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
<p>1. The City may not accurately report compensation to CalPERS. (continued)</p>	<p>employers and in all categories of employment in excess of the hours of work considered normal for employees on a full-time basis.”</p> <p><u>Non-Reportable Compensation Reported as Special Compensation</u></p> <p>In the 11/09-4 service period, the City reported six hours of regular pay as special compensation for two sampled employees, in the amount of \$325.40. The employees were fire personnel working on a shift basis. The six hours of pay, which was in addition to regular pay and FLSA premium pay, was reported as special compensation but was non-reportable compensation. Additionally, the City reported an inflated hourly rate for ten hours of FLSA premium pay which was reported as special compensation every other pay period. The FLSA hourly rate should be limited to the regular rate plus reportable special compensation.</p> <p>For determining compensation earnable for retirement purposes, all hours worked up to a normal work week need to be reported to CalPERS as regular earnings pursuant to publicly available pay schedules. Per the firefighter’s MOU, the shift employees “shall maintain the current 56-hour shift schedule as it relates to days on/days</p>	<p>The City should stop reporting special compensation to CalPERS that does not meet the definition of special compensation.</p> <p>The City should work with CalPERS ERSD to assess the impact of this incorrect reporting and determine what adjustments, if any, are needed.</p> <p>A confidential list identifying the employees mentioned in this section of the report has been sent to the City and CalPERS ERSD as an appendix to our draft report.</p>

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
<p>1. The City may not accurately report compensation to CalPERS. (continued)</p>	<p>off.” The annual schedule of <i>Shifts Worked Per Year 2004 through 2020</i>, which was provided to us by the City, identifies that there are between 120 and 123 shifts per year. A firefighter that worked between 120 and 123 shifts per year would average of 2,952 hours per year, which is consistent with the City’s 56-hour per seven day work week shift schedule. Therefore, normal earnings at 56 hours (seven day work week) need to be reported to CalPERS as regular earnings.</p> <p>For determining FLSA premium earnable for retirement purposes, only the premium pay earned for hours worked above 53 hours per week up to what is considered normal for employees on a full-time basis (56 hours for the City’s shift employees) needs be reported separately as special compensation. In this case, the three hours of FLSA premium pay at the premium rate (half time rate) must be reported. Compensation earned for services rendered over 56 hours is considered overtime and not reportable.</p> <p>Government Code § 20636(c)(2), states, in part, “Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate.”</p>	

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
2. The City may not report payrates in accordance with publicly available salary schedules.	We reviewed payrates reported to CalPERS and reconciled the payrates to the City's public salary information to determine whether payrates for the sampled employees were properly authorized and reported to CalPERS. Sampled employee payrates were properly reported in accordance with salary schedules.	None.
3. The City may not accurately report payroll information to CalPERS.	<p>We reviewed the payroll information reported to CalPERS for the sampled service periods. Our sample testing revealed that the City correctly reported the payroll information to CalPERS except for the following instances:</p> <p><u>Special Compensation Included in Reported Payrate</u></p> <p>We sampled 25 employees for service period 11/09-4 to determine whether the payrates were correctly reported to CalPERS. We determined that payrates for 12 of the 25 sampled employees were over-reported to CalPERS because the City included special compensation items in the reported base pay and regular earnings.</p> <p>Government Code § 20636(b)(1), states, "Payrate means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules."</p>	<p>The City should begin reporting special compensation separately as special compensation. The City should work with CalPERS ERSD to determine the impact of this issue and what adjustments, if any, are needed.</p> <p>A confidential list identifying the employees mentioned in this section of the report has been sent to the District and CalPERS ERSD as an appendix to our</p>

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
<p>3. The City may not accurately report payroll information to CalPERS. (continued)</p>	<p><u>Payroll Reporting Elements</u></p> <p>We reviewed the CalPERS payroll listing for service periods 11/08-4 and 11/09-4 and examined the payroll reporting elements. Our sample testing revealed that the City correctly reported the payroll reporting elements to CalPERS except for the following instances:</p> <p>The City reported an incorrect work schedule code of 173 for five employees who were regularly assigned to work a normal work schedule of 56 hours per week (average), which is equivalent to an average of 112 hours per pay period, or 242 hours per month. The City should have reported a work schedule code of 242.</p> <p>CalPERS Procedures Manual, page 99, states, in part, "Work Schedule Code is a 3-digit numeric code, used in calculating both employer rate and the member's retirement benefit. It identifies what you, the employer, consider to be full-time employment for employees in the same work group, such as by department or duties, but not by individual employees. Approved work schedule codes range from 34 to 60 hours per week." Furthermore, CalPERS Procedures Manual, page 293, identifies the correct work schedule code as 242 for full-time employees who work 56 hours per week.</p>	<p>draft report.</p> <p>The City should begin reporting work schedule code 242 for employees who work a normally work schedule of 242 hours per month.</p> <p>The City should work with CalPERS ERSD to determine the impact of this issue and what adjustments, if any, are needed.</p> <p>A confidential list identifying the employees mentioned in this section of the report has been sent to the District and CalPERS ERSD as an appendix to our draft report.</p>

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
<p>4. The City may fail to or did not submit payroll in a timely manner to CalPERS.</p>	<p>Payroll information for service periods 01/08-4, 02/08-4, 03/08-4, 03/09-4 and 11/09-4 was reviewed to determine whether payroll summary reports and retirement contributions were submitted to CalPERS within required timeframes. Required timeframes, from the close of the pay period, are 30 days for submitting payroll summary reports and 15 days for submitting retirement contributions. We found the City remitted the payroll summary reports timely; however, the City did not remit the retirement contributions timely, as follows:</p> <ul style="list-style-type: none"> • Service period 01/08-4 ended January 19, 2008. Retirement contributions due February 3, 2008 were not received by CalPERS until February 11, 2008. • Service period 03/08-4 ended March 15, 2008. Retirement contributions due March 30, 2008 were not received by CalPERS until April 2, 2008. • Service period 11/09-4 ended November 21, 2009. Retirement contributions due December 6, 2009 were not received by CalPERS until December 9, 2009. <p>California Code of Regulations § 565, states, "Member and employer contributions shall be received in the System's Sacramento office on or before 15 calendar days following the last day of the pay period to which they refer."</p>	<p>The City should ensure that CalPERS receives contributions within the required timeframes.</p> <p>The City should work with CalPERS ERSD to assess the impact of this late reporting and determine what adjustments, if any, are needed.</p>

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
<p>5. The City may not enroll all eligible employees into CalPERS membership.</p>	<p><u>Excluded Employees</u></p> <p>The contract between the Board of Administration of CalPERS and the Board of Directors of the City excludes all hourly rated or hourly basis employees. We reviewed a sample of eight hourly employees to determine whether they were properly excluded from CalPERS membership. Our sample testing revealed that the City properly excluded the individuals from CalPERS membership.</p> <p><u>Optional Membership</u></p> <p>The City's elected officials were eligible for optional CalPERS membership. We reviewed the City's enrollment practices to determine whether the elected officials were properly offered optional membership. Our sample testing revealed that the City properly offered and enrolled the sampled officials into CalPERS membership.</p> <p><u>Independent Contractor</u></p> <p>We reviewed the City's IRS 1099 Miscellaneous Income forms for calendar years 2008 and 2009 in order to identify employees that may be misclassified as independent contractors. We did not identify any employees misclassified as independent contractors.</p>	<p>None.</p> <p>None.</p> <p>None.</p>

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
<p>6. The City may unlawfully employ retired annuitants.</p>	<p>We identified one retired annuitant employed by the City during the review period. The annuitant's total hours worked in fiscal year 2008/2009 were identified and reviewed to determine whether they exceeded the 960 hour threshold. Our sample testing revealed that the retired annuitant worked 1,004.63 hours in the fiscal year and was not reinstated into CalPERS membership.</p> <p>Government Code § 21224, states, in part, "A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired employee has skills needed in performing work of limited duration. These appointments shall not exceed a total for all employers of 960 hours in any fiscal year...."</p>	<p>The City should review total hours worked in a fiscal year by retired annuitants and reinstate those that exceed the 960-hour threshold.</p> <p>The City should work with CalPERS BNSD to assess the impact of this membership issue and determine what adjustments, if any, are needed.</p> <p>A confidential list identifying the retired annuitant mentioned in this section has been sent to the City and CalPERS BNSD as an appendix to our draft report.</p>
<p>7. The City may not appropriately report members under the proper coverage group code.</p>	<p>Our sample testing revealed that the City reported individuals under the appropriate coverage group code.</p>	<p>None.</p>

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
<p>8. The City may not appropriately process industrial disability retirement determinations and appeals for safety members.</p>	<p>We reviewed the City's procedures for processing applications for industrial disability retirement for four sampled individuals. We found the City had administrative procedures in place for processing industrial disability determinations; however, the City did not timely process the determinations for the four individuals tested.</p> <p>Government Code § 21157, states, "The governing body of a contracting agency shall make its determination within six months of the date of the receipt by the contracting agency of the request by the board pursuant to Section 21154 for a determination with respect to a local safety member. A local safety member may waive the requirements of this section."</p>	<p>The City should make its industrial disability determinations within six months of CalPERS' request, or have the member waive the six month determination requirement.</p> <p>A confidential list identifying the individuals mentioned in this section of the report has been sent to the City and CalPERS BNSD as an appendix to our draft report.</p>
<p>9. The City may not accurately report unused sick leave balances for retiring CalPERS members.</p>	<p>We reviewed a sample of eight retirees to determine whether the City accurately reported unused sick leave balances for retirees. Our sample testing revealed that the City properly reported the balance of unused sick leave for the sampled retirees, except as follows:</p> <ul style="list-style-type: none"> • One retiree had a total of 349.68 hours of unused sick leave at retirement, which equates to 43.71 days of additional service credit. The City erroneously reported 365.60 days of unused sick leave, which is an over-reporting of 321.89 days of additional service credit for the retiree. 	<p>The City should accurately report unused sick leave balances for retiring CalPERS members.</p> <p>The City should work with CalPERS BNSD to assess the impact of this incorrect reporting and determine what adjustments are needed.</p> <p>A confidential list identifying the retirees mentioned in this section</p>

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
<p>9. The City may not accurately report unused sick leave balances for retiring CalPERS members. (continued)</p>	<ul style="list-style-type: none"> Another retiree had a total of 368.99 hours of unused sick leave at retirement, which equates to 46.124 days of additional service credit. The City erroneously reported 441.28 days of unused sick leave, which is an over-reporting of 395.156 days of additional service credit for the retiree. <p>Government Code § 20965, states, in part, “A member... whose effective date of retirement is within four months of separation from employment with the employer which granted the sick leave credit, shall be credited at his or her retirement with 0.004 year of service credit for each unused day of sick leave certified to the board by his or her employer. The certification shall report only those days of unused sick leave that were accrued by the member during the normal course of his or her employment and shall not include any additional days of sick leave reported for the purpose of increasing the member’s retirement benefit...retirement benefits may be adjusted where improper reporting is found.”</p>	<p>of the report has been sent to the City and CalPERS BNSD as an appendix to our draft report.</p>
<p>10. The City may not comply with the provisions for additional service credit (golden handshake) for retiring CalPERS members.</p>	<p>We reviewed the City’s compliance for additional service credit under the golden handshake provision for one retiring member. We determined the City complied with the requirement for providing two years additional service credit, and determined the employee appropriately received the additional service credit.</p>	<p>None.</p>

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
<p>11. The City may not properly enroll eligible employees and their dependents in health benefits.</p>	<p>We reviewed a sample of 12 employees to assess the health benefits eligibility and enrollment of members and their dependents. Our sample testing revealed that the City properly enrolled eligible employees and their dependents in the CalPERS Health Benefits Program, except for the following instances:</p> <p><u>Member Eligibility – Required Documentation</u></p> <p>The City did not have a completed Health Benefit Plan Enrollment (HBD-12) form on file for the sampled 12 employees enrolled in health benefits. In addition, the City did not maintain Declaration of Health Coverage (HB-12A) forms on file for the 12 sampled employees who had first enrolled and/or added dependents to their health coverage subsequent to January 1, 1998.</p> <p>California Code of Regulations § 599.500(f), states, “Enroll means to file with the employing office a properly completed Health Benefits Plan Enrollment Form electing to be enrolled in health benefits plan.”</p> <p>The HB-12A provides information on enrollment options, consequences for non-enrollment and helps ensure compliance with the Health Insurance Portability and Accountability act (HIPAA). Effective January 1, 1998,</p>	<p>The City must ensure that the proper member and dependent enrollment documentation is on file at the City within 60 days from the date of our final report.</p> <p>Please send an email to: <i>HBB_Audit_Services@calpers.ca.gov</i> once the requested documentation is on file. The CalPERS HBB may be contacted at (916) 795-3836 with any questions.</p> <p>A confidential list identifying the employees mentioned in this section of the report has been sent to the City and CalPERS HBB as an appendix to our draft report.</p>

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
<p>11. The City may not properly enroll eligible employees and their dependents in health benefits. (continued)</p>	<p>each employee must sign the HB-12A when first eligible to enroll or when making health coverage changes such as open enrollment changes or when changing health plans, moving, adding or deleting a dependent, or canceling health benefits. The employer must provide the HB-12A when the employee requests enrollment or with the HBD-12 form and must provide the employee a copy of the signed form and keep the original in the employee's file.</p> <p><u>Dependent Eligibility</u></p> <p>The City did not provide verification for eleven dependents enrolled under five employees, including seven economically dependent children, one spouse, two children and one step child.</p> <p>Government Code § 20085, states, in part, "(a) It is unlawful for a person to do any of the following: (1) Make, or cause to be made, any knowingly false material statement or material representation, to knowingly fail to disclose a material fact, or to otherwise provide false information with the intent to use it, or allow it to be used, to obtain, receive, continue, increase, deny, or reduce any benefit administered by this system. (b) For purposes of this section, 'statement' includes, but is not limited to, any</p>	

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
<p>11. The City may not properly enroll eligible employees and their dependents in health benefits. (continued)</p>	<p>oral or written application for benefits, report of family relationship..., or continued eligibility for a benefit or the amount of a benefit administered by this system. (c) A person who violates any provision of this section is punishable by imprisonment in a county jail not to exceed one year, or by a fine of not more than five thousand dollars (\$5,000), or by both that imprisonment and fine. (d) A person violating any provision of this section may be required by the court in a criminal action to make restitution to this system...for the amount of the benefit unlawfully obtained."</p> <p>Government Code § 22775, defines family member as an, "Employee's or annuitant's spouse or domestic partner and any unmarried child, including an adopted child, a stepchild, or recognized natural child. The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children."</p> <p>California Code of Regulations § 599.500, states, in part, "(k) Eligible means eligible under the law and this subchapter to be enrolled....(n) A child attains the status of 'family member' at birth....'family member' includes any unmarried child who is economically dependent upon the employee or annuitant, when there exists a parent-child relationship with the employee or annuitant."</p>	

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
12. The City may not contribute the appropriate health contribution amounts for active employees.	We reviewed the health contributions reported for November 2009. We determined that the City contributed the appropriate health contribution amount as part of the sampled members' total monthly premium amount.	None.
13. The City may not remit health contributions within the required timeframe.	We determined that the City remitted the health contribution payments within the appropriate timeframe.	None.
14. The City may not maintain appropriate ACES security procedures.	<p>We reviewed the security procedures for the City's ACES users to determine whether reasonable security precautions were maintained and to determine whether the required security documents were properly completed and filed for ACES users.</p> <p>We determined the City maintained reasonable security precautions. However, the City did not maintain an ACES Employer User Security Agreement (AESD-43) for eight authorized ACES users, and did not complete and maintain Delete ACES User Access (AESD-42) forms for three ACES users who no longer required access.</p> <p>During the field work, the City was proactive in completing and submitting the required documentation and has agreed to maintain the forms as required.</p>	<p>The City should ensure that ACES user security agreements are timely completed and retained in a secure worksite location for the life of the Agreements and for two years following the deactivation or termination of the Agreements.</p> <p>A confidential list identifying the employees mentioned in this section of the report has been sent to the District and CalPERS ERSD as an appendix to our draft report.</p>

CITY OF ONTARIO

RISK	MITIGATION & OBSERVATION	RECOMMENDATION
14. The City may not maintain appropriate ACES security procedures. (continued)	CalPERS ACES Security procedures outlined on the CalPERS website at www.calpers.ca.gov require agencies to keep a signed copy of security documents on file for ACES users. An AESD-43 must be completed for each employee using CalPERS on-line access and be available to CalPERS upon request. In addition, an AESD-42 must be completed for each ACES user who no longer requires access to ACES or who has terminated employment with the City. Forms must be retained in a secure work site location of the employer, for the life of the Agreement and for two years following the deactivation or termination of the agreement. CalPERS is to be notified immediately in the event that any of its sensitive or confidential information is subject to unauthorized disclosure, modification or destruction.	

CITY OF ONTARIO

CONCLUSION

We limited this review to the areas specified in the scope section of this report. We limited our test of transactions to samples of the City's payroll reports and personnel records. The sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code, except as noted above.

Respectfully submitted,

Original Signed by Margaret Junker

Margaret Junker, CPA, CIA, CIDA
Chief, Office of Audit Services

Date: February 2011

Staff: Michael Dutil, CIA, Senior Manager
Jacque Conway, CPA, CIA, CGFM, Manager
Adeeb Alzanoon
Jodi Epperson

APPENDIX A

STATUS OF PRIOR REVIEW

**FOLLOW UP ON PRIOR REVIEW FINDINGS
CITY OF ONTARIO EMPLOYER CODE 0111
PRIOR REVIEW P8-015, DATED FEBRUARY 2000**

Prior Review Finding	Prior Review Recommendation	Status of Prior Recommendation
1. Incorrect reporting of uniform allowance	<p>The City should immediately begin reporting the cost of uniforms provided to its employees. The City should also review payroll reports submitted to CalPERS during the audit period and subsequently, identify cost of uniforms not reported, and make necessary adjustments. The City should work with CalPERS Actuarial & Employer Services Division (AESD) to ensure that affected member records are adjusted.</p>	<p>Similar finding noted in the current report. The City did not report the value of the uniforms provided to three sampled employees.</p>
2. Incorrect reporting of unused sick leave	<p>The City should review retired employees' files to ensure that retirees' unused sick leave balance was correctly reported to CalPERS.</p> <p>We have provided the City and CalPERS Benefit Services Division (BNSD), separately, a confidential list with the name of the retiree discussed above. BNSD should ensure that the additional service credit is given to this retiree and the appropriate adjustment is made to the retirement allowance.</p>	<p>Similar finding noted in the current report. The City did not correctly certify unused sick leave credit for two retirees in our test sample. The retirees received more service credit than they were entitled to receive.</p>
3. Noncompliance with disability determination requirements	<p>The City should establish procedures that will promote timely determinations of disability retirement cases.</p>	<p>Similar finding noted in the current report. The City had administrative procedures in place for processing disability retirement determinations; however, the City did not timely process the determinations or obtain a waiver for four individuals tested.</p>

**FOLLOW UP ON PRIOR REVIEW FINDINGS
CITY OF ONTARIO EMPLOYER CODE 0111
PRIOR REVIEW P8-015, DATED FEBRUARY 2000**

Prior Review Finding	Prior Review Recommendation	Status of Prior Recommendation
4. Improper conversion of employer-paid member contributions	<p>The City should identify those members who retired during the audit period and work with AESD to make necessary corrections to retired members' final compensation if the computation of their final compensation included improper conversion of EPMC to compensation.</p> <p>We have provided the City and AESD, separately, a confidential list with the retiree names. AESD should ensure that the appropriate adjustments are made to their retirement allowances.</p>	Implemented. No similar observations were noted.
<p>Conclusion: The City did not implement all recommendations from the prior review. Specifically, the value of uniforms provided to three sampled employees was not reported, two retirees did not receive the correct certification of unused sick leave credit, and the industrial disability determinations were not timely processed for four individuals tested. No similar observations were noted for prior report finding #3.</p>		

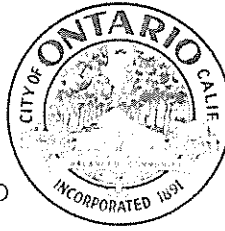
APPENDIX B

CITY'S WRITTEN RESPONSE

CITY OF

303 EAST "B" STREET, CIVIC CENTER

ONTARIO



ONTARIO

CALIFORNIA 91764-4105

(909) 395-2000
FAX (909) 395-2070

PAUL S. LEON
MAYOR

DEBRA DORST-PORADA
MAYOR PRO TEM

ALAN D. WAPNER
SHEILA MAUTZ
JIM W. BOWMAN
COUNCIL MEMBERS

CHRIS HUGHES
CITY MANAGER

MARY E. WIRTES, MMC
CITY CLERK

JAMES R. MILHISER
TREASURER

February 3, 2011

CalPERS
Office of Audit Services
P.O. Box 942701
Sacramento, CA 94229-2701

Dear Ms. Junker:

Enclosed is the City of Ontario's response in regards to the recommendations included in the compliance review report prepared by the California Public Employees' Retirement System (CalPERS) dated December 2010. The City concurs with all of the recommendations except item #1 relating to "Non-Reportable Compensation Reported as Special Compensation" and item #3 relating to "Payroll Reporting Elements". Please see the attachment in regards to the City's written response.

Thank you to CalPERS staff members for their assistance and cooperation in conducting the City of Ontario's compliance review and related report.

Sincerely,


Grant D. Yee
Administrative Services/Finance Director

Enclosure

Cc: Doreen Nunes, Fiscal Services Director, City of Ontario
Linda Matthews, Human Resources Director, City of Ontario

1. The City may not accurately report compensation to CalPERS.

Monetary Value of Uniforms Provided

Recommendation: *The City should report the monetary value of uniforms provided to employees as special compensation.*

City Response: *The City concurs. There is a group of employees that in lieu of a uniform allowance the City rents and cleans the uniforms. For this group of employees, the City will report to CalPERS as compensation the maximum weekly rental and cleaning fee. The City's calculation is as follows: The maximum weekly rental and cleaning fees is \$7.38. Therefore, for the biweekly pay period, the monetary value would be \$14.76. This monetary value would be reported as special compensation to CalPERS and would be reviewed annually and adjusted, if needed, accordingly.*

Non-Reportable Compensation Reported as FLSA Premium Pay

Recommendation: *The City should stop reporting special compensation to CalPERS that does not meet the definition of FLSA premium pay.*

City Response: *This finding relates to an instance where the City reported FLSA premium pay for a non-shift Fire employee who worked a 40-hour workweek. The City concurs that FLSA premium pay for 40-hour Fire personnel is not reportable compensation and this was a one-time oversight. The City has adequate controls and review processes already in place.*

Non-Reportable Compensation Reported as Special Compensation

Recommendation: *The City should stop reporting special compensation to CalPERS that does not meet the definition of special compensation.*

City Response: *Please refer to attached response regarding compensation for sworn Fire personnel.*

3. The City may not accurately report payroll information to CalPERS.

Special Compensation Included in Reported Pay Rate

Recommendation: *The City should begin reporting special compensation separately as special compensation.*

City Response: *The City will begin reporting all special compensation (Multiple Components of Pay-MCOP) separated from the basic pay rate.*

Payroll Reporting Elements

Recommendation: *The City should begin reporting work schedule code 242 for employees who work an average of 56 hours per week.*

City Response: *Please refer to attached response regarding compensation for sworn Fire personnel.*

4. The City may fail to or did not submit payroll in a timely manner to CalPERS.

Recommendation: *The City should ensure that CalPERS receives contributions within the required timeframes.*

City Response: *The City concurs, although only three payments were submitted late by only a few days due to reconciliation issues. The City has remitted payments timely since the last occurrence in December 2009 and all other years.*

6. The City may unlawfully employ retired annuitants.

Recommendation: *The City should review total hours worked in a fiscal year by retired annuitants and reinstate those that exceed the 960-hours threshold.*

City Response: *The City concurs that there was only one oversight in regards to the employment of a retired annuitant. The City has adequate controls and review processes already in place.*

8. The City may not appropriately process industrial disability retirement determinations and appeals for safety members.

Recommendation: *The City should make its industrial disability determinations within six months of CalPERS' request, or have the member waive the six month determination requirement.*

City Response: *The City concurs that this was a one-time oversight. The City has adequate controls and review processes already in place.*

9. The City may not accurately report unused sick leave balances for retiring CalPERS members.

Recommendation: *The City should accurately report unused sick leave balances for retiring CalPERS members.*

City Response: *The City concurs that for two retirees there was an oversight in calculating the unused sick leave balances as a result of a change in the CalPERS form at the time of the oversight.*

11. The City may not properly enroll eligible employees and their dependents in health benefits.

Member Eligibility – Required Documentation

Recommendation: *The City must ensure that the proper member and dependent enrollment documentation is on file at the City within 60 days from the date of our final report.*

City Response: *The City concurs and has corrected the situation with the open enrollment process for 2011.*

Dependent Eligibility – Required Documentation

Recommendation: *The City must ensure that the proper member and dependent enrollment documentation is on file at the City within 60 days from the date of our final report.*

City Response: *The City concurs and has corrected the situation with the open enrollment process for 2011.*

14. The City may not maintain Appropriate ACES security procedures.

Recommendation: *The City should ensure that ACES user security agreements are timely completed and retained in a secure worksite location for the life of the Agreements and for two years following the deactivation or termination of the Agreements.*

City Response: *The City concurs and has corrected the situation at the time of the compliance review in March 2010.*

Response Regarding Compensation for Sworn Fire Personnel

Two findings related to how the City compensates sworn Fire personnel are closely related and require a combined response to fully understand how the City compensates sworn Fire personnel.

CalPERS FINDINGS

1. The City may not accurately report compensation to CalPERS.

Non-Reportable Compensation Reported as Special Compensation

This finding relates to the City reporting 6 hours of pay as special compensation. The CalPERS finding is that this is not eligible compensation and that the City reported an inflated FLSA hourly rate. The City disagrees, as explained below.

3. The City may not accurately report payroll information to CalPERS.

Payroll Reporting Elements

This finding relates to the City reporting work schedules of 173 hours for employees who worked an average of 56 hours per month. The City concurs that 173 is the incorrect work schedule code. However, it questions whether the appropriate work schedule code is 242 hours (based on 56 hours per week) or 230 hours (based on 53 hours per week). Based upon the initial discussion with the CalPERS auditor, the schedule code for shift Fire personnel has been changed to 230.

The source of the two findings above is related to the how the City reports the monthly salary, the proper calculation of the FLSA hourly rate and ultimately an understanding of the correct use of the 106 or 112 hours per pay period for shift Fire personnel. Resolution of these issues requires a full understanding of the system, and a combined response for these last two findings is provided below.

SUMMARY OF CITY'S POSITION

The City's opinion is that it reported all pay as required by its contract with the Fire unions and in compliance with CalPERS regulations and statutes. The City has compensated its Fire personnel in the manner it does today since approximately 1990. It has been approved in at least two subsequent CalPERS audits. The City's method of compensating Fire personnel has not changed since these audits. It is the City's opinion that its system remains in compliance with CalPERS law and regulations.

OVERVIEW OF COMPENSATION REPORTING PRACTICES

This overview applies to the City's sworn firefighting personnel who are assigned to shift work, including the ranks of Firefighter, Fire Engineer, Fire Captain, and Fire Battalion Chief.

These personnel are regularly assigned to work an average of 56 hours per week, which equates to 112 hours per pay period, or 242 hours per month.

Per the City's agreement with the union, the City pays a monthly salary based on a 53-hour week (or 106 hours per pay period and 230 hours per month). The City also compensates these employees at 1.5 times their regular rate of pay for the additional 3 regularly scheduled hours worked each week (6 hours per pay period).

The City currently reports compensation to CalPERS as follows:

1. The base rate for 53-hours per week is reported to CalPERS as pay rate. This pay rate amount also includes special pays such as longevity, professional development, paramedic pay, bomb squad, etc. (Note: Based on a separate finding in this audit, the City will no longer include special pays in pay rate. Pay rate will be reported separately from special compensation.)
2. The 6 hours of regularly scheduled overtime per pay period is reported to CalPERS as follows:
 - a. Six (6) hours of straight time compensation is reported as special compensation (which the City refers to as FPI, or Fire Premium Incentive).
 - b. The additional .5 portion (which the City refers to as FLSA premium pay) is also reported as special compensation.
 - c. Together, these items represent the FLSA premium pay the City is required to report in accordance with CalPERS regulations.
3. The work schedule hours have been corrected to reflect 230, which is consistent with the 53-hour weekly schedule.

WHY THE CITY'S SYSTEM IS IN COMPLIANCE WITH CalPERS LAWS AND REGULATIONS

The draft finding is that the City is double reporting the 6 hours of the FPI each pay period (the straight time portion of the difference between the 53 hours and 56 hours). This finding appears to be based on the following analysis provided by CalPERS, per an e-mail from Jodi Epperson on July 22, 2010 to Theresa Lee (the City's Payroll Supervisor):

"In looking at the reporting..., we identified that the FPI pay that you are reporting as special compensation is non-reportable earnings. The reason being is that 6 hours have already been accounted for in the hourly rate paid.

... in the 11/09-4 service period, per the payroll register, he received \$5,748.69 in regular earnings for 106 hours paid. That equates to an hourly rate of \$54.23 ($\$5,748.69 / 106 = \54.23). His FLSA hourly rate was \$51.33 (monthly payrate x 12 months / 2912 hours). The regular threshold hours of $112 \times \$51.33 = \$5,748.69$, which is the reportable earnings. As you can see, the end result is the same as far as reportable regular earnings. In addition, you are correctly reporting the FLSA premium hours (PRE earnings code) as special compensation. However, the 6 hours of FPI pay is non-reportable to CalPERS because there is no additional pay to be reported. The 112 hours have been accounted for in the regular earnings reported and the premium hours have been accounted for in the PRE special compensation reporting."

In the analysis above, CalPERS assumes the FLSA hourly rate is based on 112 hours per pay period rather than 106 hours. With this assumption, then it concludes that the City has already accounted for the 6 hours of straight time in regular salary and should not report the FPI as special compensation. However, CalPERS is incorrectly calculating the FLSA regular rate of pay upon which the FLSA premium pay is calculated.

The FLSA hourly rate should be based on 106 hours per pay period (53 hours per week), not 112 hours per pay period. The FLSA requires the City to pay premium time on the employee's regular rate of pay. As such, in CalPERS' analysis above, the FLSA rate should be the same as the hourly rate.

Specifically, the FLSA hourly rate, per law, is calculated as follows:

Published base monthly rate (53 hours per week):	\$10,461.29
Special Pays:	
Professional Development Incentive :	\$425.00
Longevity (15%):	\$1,569.22
Total monthly FLSA rate:	\$12,455.51
Regular hourly rate per FLSA (106 hours per pp):	\$54.23

There is no legal basis for a lower FLSA rate of \$51.33. This number is based on an incorrect calculation by CalPERS. The FLSA regular rate is \$54.23. As such, the reportable earnings for regular salary are $\$54.23 \times 106 \text{ hours} = \$5,758.38$. The City then owes the

compensation for the regularly scheduled overtime for 6 hours per pay period at 1.5 premium rate, which is the amount the City is required to and does report as special compensation.

A related issue is whether the correct schedule code is 230 or 242 hours. Because the monthly rate is based on 230 hours per month (106 hours per pay period), it is the City's understanding that 230 is the correct code. If the schedule code is 242 hours, as recommended by CalPERS, then the compensation may be miscalculated for purposes of retirement.

CONCLUSION

For the reasons indicated above, the City's position continues to be that it is in compliance with CalPERS laws and regulations. The City requests that CalPERS remain consistent with its prior audit findings and allow the City to continue to report compensation in its current manner, except that work schedules hours will be reported as 230 instead of 172. Also, consistent with the other audit finding, the City will report base and special pays separately.